



Senate

General Assembly

February Session, 2012

File No. 105

Senate Bill No. 70

Senate, March 26, 2012

The Committee on General Law reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING FAIRNESS IN CERTAIN COMMERCIAL CONSTRUCTION CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-158j of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2012*):

3 (a) Each construction contract shall contain the following
4 provisions: (1) A requirement that the owner pay any amounts due
5 any contractor, subcontractor or supplier in a direct contractual
6 relationship with the owner, whether for labor performed or materials
7 furnished, not later than thirty days after the date any written request
8 for payment has been made by such contractor, subcontractor or
9 supplier; (2) a requirement that the contractor pay any amounts due
10 any subcontractor or supplier, whether for labor performed or
11 materials furnished, not later than thirty days after the date the
12 contractor receives payment from the owner which encompasses labor
13 performed or materials furnished by such subcontractor or supplier;
14 [and] (3) a requirement that the contractor shall include in each of its

15 subcontracts a provision requiring each subcontractor and supplier to
16 pay any amounts due any of its subcontractors or suppliers, whether
17 for labor performed or materials furnished, not later than thirty days
18 after the date such subcontractor or supplier receives a payment from
19 the contractor which encompasses labor performed or materials
20 furnished by such subcontractor or supplier; (4) a requirement that, for
21 all pending or approved change orders or directives, the minimum
22 allowable rate of overhead and profit to be paid to any contractor or
23 subcontractor who performs such work shall be not less than fifteen
24 per cent of the total value of such work; and (5) a requirement that at
25 any time the cumulative sum of the total pending construction change
26 orders or other pending change directives exceeds five per cent of the
27 original total contract or subcontract cost, the contractor or
28 subcontractors who have performed work under such pending change
29 orders or directives are relieved of any express or implied duty to
30 perform any additional changes to the work under the terms of such
31 contract or subcontract.

32 (b) Each payment requisition submitted in accordance with the
33 requirements of subsection (a) of this section shall include a statement
34 showing the status of all pending construction change orders, other
35 pending change directives and approved changes to the original
36 contract or subcontract. Such statement shall identify the pending
37 construction change orders and other pending change directives, and
38 shall include the date such change orders and directives were initiated,
39 the costs associated with their performance and a description of any
40 work completed. As used in this section, "pending construction change
41 order" or "other pending change directive" means an authorized
42 directive for extra work that has been issued to a contractor or a
43 subcontractor, but an approved change order has not yet been issued
44 and payment cannot be processed for such extra work.

45 (c) (1) If payment is not made by an owner in accordance with the
46 requirements of subdivision (1) of subsection (a) of this section or any
47 applicable construction contract, such contractor, subcontractor or
48 supplier shall set forth its claim against the owner through notice by

49 registered or certified mail.

50 (2) If payment is not made by a contractor in accordance with the
51 requirements of subdivision (2) of subsection (a) of this section or any
52 applicable construction contract, the subcontractor or supplier shall set
53 forth its claim against the contractor through notice by registered or
54 certified mail.

55 (3) If payment is not made by a subcontractor or supplier in
56 accordance with the provisions of subdivision (3) of subsection (a) of
57 this section, the subcontractor or supplier to whom money is owed
58 shall set forth its claim against the subcontractor or supplier who has
59 failed to comply with the provisions of said subdivision (3) through
60 notice by registered or certified mail.

61 (4) (A) Ten days after the receipt of any notice specified in
62 subdivisions (1), (2) and (3) of this subsection, the owner, contractor,
63 subcontractor or supplier, as the case may be, shall be liable for interest
64 on the amount due and owing at the rate of one per cent per month.
65 Such interest shall accrue beginning on the date any such notice is
66 received. In addition, such owner, contractor, subcontractor or
67 supplier, upon written demand from the party providing such notice,
68 shall be required to place funds in the amount of the claim, plus such
69 interest of one per cent per month, in an interest-bearing escrow
70 account in a bank in this state. [provided]

71 (B) Each owner that enters into a contract under this section and
72 fails or neglects to make payment to a contractor for labor and
73 materials supplied under a contract, as required pursuant to
74 subdivision (1) of subsection (a) of this section, shall, upon notice by
75 any person who has not been paid by the contractor for such labor and
76 materials supplied in the performance of the work under the contract,
77 place funds in the amount of the claim, plus such interest of one per
78 cent per month, in an interest-bearing escrow account in a bank in this
79 state. Any such owner, contractor, subcontractor or supplier, upon
80 receiving notice under subparagraph (A) or (B) of this subdivision,
81 may refuse to place the funds in escrow on the grounds that the party

82 making such demand has not substantially performed the work or
83 supplied the materials according to the terms of the construction
84 contract. In the event that such owner, contractor, subcontractor or
85 supplier refuses to place such funds in escrow and such owner,
86 contractor, subcontractor or supplier is found to have unreasonably
87 withheld payment due a party providing such notice, such owner,
88 contractor, subcontractor or supplier shall be liable to the party making
89 demand for payment of such funds and for reasonable attorneys' fees
90 plus interest on the amount due and owing at the rate of one per cent
91 per month. In addition, any owner, contractor, subcontractor or
92 supplier who is found to have withheld payments to a party providing
93 such notice in bad faith shall be liable for ten per cent damages.

94 (d) No payment may be withheld from a subcontractor or supplier
95 for work performed or materials furnished because of a dispute
96 between a contractor and another contractor, subcontractor or
97 supplier.

98 (e) This section shall not be construed to prohibit progress payments
99 prior to final payment of the contract and is applicable to all
100 subcontractors and suppliers for material or labor whether they have
101 contracted directly with the contractor or with some other
102 subcontractor on the work. Each owner that enters into a contract
103 under this section and fails or neglects to make payment to a
104 contractor for labor and materials supplied under a contract, as
105 required pursuant to subdivision (1) of subsection (a) of this section,
106 shall, upon demand of any person who has not been paid by the
107 contractor for such labor and materials supplied in the performance of
108 the work under the contract, promptly pay the person for such labor or
109 materials. Demand for payment shall be served on the owner and a
110 copy of each demand shall be sent to the contractor by certified mail,
111 return receipt requested to any address at which the owner and
112 contractor conduct business. If the owner fails to make such payment,
113 the person making the demand shall have a direct right of action
114 against the owner in the superior court for the judicial district in which
115 the project is located. The owner's obligations for direct payments to

116 the contractor, subcontractors or suppliers giving notice pursuant to
117 this section shall be limited to the amount owed to the contractor
118 pursuant to subdivision (1) of subsection (a) of this section by the
119 owner for work performed under the contract at the date such notice is
120 provided. Any payment made directly by the owner to a subcontractor
121 or supplier for labor or materials, which is the subject of a direct
122 contractual relationship between such subcontractor or supplier and a
123 contractor, shall discharge the obligation of such contractor to the
124 extent of such payment.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2012	42-158j
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GL *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

There is no fiscal impact to the state as the bill makes changes to requirements concerning private-sector contracts for building, renovating, or rehabilitating commercial or industrial buildings.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**SB 70*****AN ACT CONCERNING FAIRNESS IN CERTAIN COMMERCIAL CONSTRUCTION CONTRACTS.*****SUMMARY:**

The law establishes certain requirements, including payment schedule provisions, for private-sector contracts for building, renovating, or rehabilitating commercial or industrial buildings. It covers contracts between (1) a property owner or lessee and a general contractor, (2) a general contractor and a subcontractor, and (3) subcontractors. This bill (1) relieves contractors and subcontractors from performing additional work that exceeds 5% of the original total contract cost while a change order or directive is pending and (2) sets a minimum payment percentage rate for change orders or directives.

Generally, if payment is not made according to the law's contract provisions, the general contractor, subcontractor, or supplier must state their claim by giving notice by registered or certified mail. Ten days after receiving the notice, the party owing the debt is liable for interest at the rate of 1% per month, accruing from the day the notice is received. Further, the party owing the debt must, at the claimant's demand, place the amount being claimed, plus the interest, in an interest-bearing escrow account in a bank in Connecticut. The bill gives a subcontractor a direct right of action against an owner who has not paid the contractor for labor and materials supplied to the project by the subcontractor. Thus, the bill authorizes a subcontractor to give notice to an owner who must comply with the law's escrow account requirements.

An owner's payment to a subcontractor or supplier for labor or materials that were the subject of a contract between the subcontractor and a contractor discharges the contractor's obligation for the

payment.

EFFECTIVE DATE: October 1, 2012

CONTRACT REQUIREMENTS

The bill requires commercial construction contracts to include a provision that relieves contractors and subcontractors from any duty to perform additional work if the cumulative amount of the pending construction change orders or other pending change directives exceeds 5% of the original total contract or subcontract cost. A contract must also include a requirement that for all change orders or directives, whether approved or pending, the allowable overhead and profit rate that a contractor or subcontractor who performs the work can charge must be at least 15% of the work's total value.

Under the bill, a "pending construction change order" or "other pending change directive," means that a change order has not been approved and payment cannot be processed for the work.

BACKGROUND

Covered Contracts

The law covers commercial contracts or subcontracts for construction, renovation, or rehabilitation other than those (1) for public works entered into by the United States, this or any other state, or any municipality or political subdivision; (2) funded or insured by the U.S. Department of Housing and Urban Development; (3) between an owner and contractor for less than \$25,000, or a subcontract made under one; or (4) for a building intended for residential occupancy with four or fewer units (CGS § 42-158i).

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 17 Nay 0 (03/13/2012)